

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

SENATE BILL 351

4
5 By: Senator Everett

For An Act To Be Entitled

9 "UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT."

Subtitle

12 "UNIFORM UNINCORPORATED NONPROFIT
13 ASSOCIATION ACT."

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DEFINITIONS. In this Act:

18 (1) "Member" means a person who, under the rules or practices of a
19 nonprofit association, may participate in the selection of persons authorized
20 to manage the affairs of the nonprofit association or in the development of
21 policy of the nonprofit association.

22 (2) "Nonprofit association" means an unincorporated organization, other
23 than one created by a trust, consisting of two or more members joined by
24 mutual consent for a common, nonprofit purpose. However, joint tenancy,
25 tenancy in common, or tenancy by the entireties does not by itself establish a
26 nonprofit association, even if the co-owners share use of the property for a
27 nonprofit purpose.

28 (3) "Person" means an individual, corporation, business trust, estate,
29 trust, partnership, association, joint venture, government, governmental
30 subdivision, agency, or instrumentality, or any other legal or commercial
31 entity.

32 (4) "State" means a State of the United States, the District of
33 Columbia, the Commonwealth of Puerto Rico, or any territory or insular
34 possession subject to the jurisdiction of the United States.

SECTION 2. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW AND EQUITY.

1 Principles of law and equity supplement this Act unless displaced by a
2 particular provision of it.

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4 SECTION 3. TERRITORIAL APPLICATION. Real and personal property in this
5 State may be acquired, held, encumbered, and transferred by a nonprofit
6 association, whether or not the nonprofit association or a member has any
7 other relationship to this State.

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9 SECTION 4. REAL AND PERSONAL PROPERTY; NONPROFIT ASSOCIATION AS
10 LEGATEE, DEVISEE, OR BENEFICIARY.

11 (a) A nonprofit association is a legal entity separate from its members
12 for the purposes of acquiring, holding, encumbering, and transferring real and
13 personal property.

14 (b) A nonprofit association in its name may acquire, hold, encumber, or
15 transfer an estate or interest in real or personal property.

16 (c) A nonprofit association may be a beneficiary of a trust or contract,
17 a legatee, or a devisee.

18

19 SECTION 5. STATEMENT OF AUTHORITY AS TO REAL PROPERTY.

20 (a) A nonprofit association may execute and record a statement of
21 authority to transfer an estate or interest in real property in the name of
22 the nonprofit association.

23 (b) An estate or interest in real property in the name of a nonprofit
24 association may be transferred by a person so authorized in a statement of
25 authority recorded in the office of the circuit clerk in the county in which a
26 transfer of the property would be recorded.

27 (c) A statement of authority must set forth:

28 (1) the name of the nonprofit association;

29 (2) the federal tax identification number, if any, of the
30 nonprofit association;

31 (3) the address in this state, including the street address, if
32 any, of the nonprofit association, or, if the nonprofit association does not
33 have an address in this state, its address out of state;

34 (4) that it is an unincorporated nonprofit association; and

35 (5) the name or title of a person authorized to transfer an estate
36 or interest in real property held in the name of the nonprofit association.

1 (d) A statement of authority must be executed in the same manner as an
2 affidavit by a person who is not the person authorized to transfer the estate
3 or interest.

4 (e) A filing officer may collect a fee for recording a statement of
5 authority in the amount authorized for recording a transfer of real property.

6 (f) An amendment, including a cancellation, of a statement of authority
7 must meet the requirements for execution and recording of an original
8 statement. Unless canceled earlier, a recorded statement of authority or its
9 most recent amendment is canceled by operation of law five years after the
10 date of the most recent recording.

11 (g) If the record title to real property is in the name of a nonprofit
12 association and the statement of authority is recorded in the office of the
13 circuit clerk in the county in which a transfer of real property would be
14 recorded, the authority of the person named in a statement of authority to
15 transfer is conclusive in favor of a person who gives value without notice
16 that the person lacks authority.

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18 SECTION 6. LIABILITY IN TORT AND CONTRACT.

19 (a) A nonprofit association is a legal entity separate from its members
20 for the purposes of determining and enforcing rights, duties, and liabilities
21 in contract and tort.

22 (b) A person is not liable for a breach of a nonprofit association's
23 contract merely because the person is a member, is authorized to participate
24 in the management of the affairs of the nonprofit association, or is a person
25 considered to be a member by the nonprofit association.

26 (c) A person is not liable for a tortious act or omission for which a
27 nonprofit association is liable merely because the person is a member, is
28 authorized to participate in the management of the affairs of the nonprofit
29 association, or is a person considered as a member by the nonprofit
30 association.

31 (d) A tortious act or omission of a member or other person for which a
32 nonprofit association is liable is not imputed to a person merely because the
33 person is a member of the nonprofit association, is authorized to participate
34 in the management of the affairs of the nonprofit association, or is a person
35 considered as a member by the nonprofit association.

36 (e) A member of, or a person considered to be a member by, a nonprofit

1 association may assert a claim against the nonprofit association. A nonprofit
2 association may assert a claim against a member or a person considered to be a
3 member by the nonprofit association.

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5 SECTION 7. CAPACITY TO ASSERT AND DEFEND; STANDING.

6 (a) A nonprofit association, in its name, may institute, defend,
7 intervene, or participate in a judicial, administrative, or other governmental
8 proceeding or in an arbitration, mediation, or any other form of alternative
9 dispute resolution.

10 (b) A nonprofit association may assert a claim in its name on behalf of
11 its members if one or more members of the nonprofit association have standing
12 to assert a claim in their own right, the interests the nonprofit association
13 seeks to protect are germane to its purposes, and neither the claim asserted
14 nor the relief requested requires the participation of a member.

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16 SECTION 8. EFFECT OF JUDGMENT OR ORDER. A judgment or order against a
17 nonprofit association is not by itself a judgment or order against a member or
18 a person authorized to participate in the management of the affairs of the
19 nonprofit association.

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21 SECTION 9. DISPOSITION OF PERSONAL PROPERTY OF INACTIVE NONPROFIT
22 ASSOCIATION. If a nonprofit association has been inactive for three years or
23 longer, or a different period specified in a document of the nonprofit
24 association, a person in possession or control of personal property of the
25 association may transfer custody of the property:

26 (1) if a document of a nonprofit association specifies a person to whom
27 transfer is to be made under these circumstances, to that person; or

28 (2) if no person is so specified, to a nonprofit association or
29 nonprofit corporation pursuing broadly similar purposes, or to a government or
30 governmental subdivision, agency, or instrumentality.

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32 SECTION 10. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF PROCESS.

33 (a) A nonprofit association may file in the office of the Secretary of
34 State a statement appointing an agent authorized to receive service of
35 process.

36 (b) A statement appointing an agent must set forth:

- 1 (1) the name of the nonprofit association;
2 (2) the federal tax identification number, if any, of the
3 nonprofit association;
4 (3) the address in this state, including the street address, if
5 any, of the nonprofit association, or, if the nonprofit association does not
6 have an address in this state, its address out of state; and
7 (4) the name of the person in this state authorized to receive
8 service of process and the person's address, including the street address, in
9 this state.

10 (c) A statement appointing an agent must be signed and acknowledged by
11 a person authorized to manage the affairs of the nonprofit association. The
12 statement must also be signed and acknowledged by the person appointed agent,
13 who thereby accepts the appointment. The appointed agent may resign by filing
14 a resignation in the office of the Secretary of State and giving notice to the
15 nonprofit association.

16 (d) A filing officer may collect a fee for filing a statement
17 appointing an agent to receive service of process, an amendment, a
18 cancellation, or a resignation in the amount charged for filing similar
19 documents.

20 (e) An amendment to or cancellation of a statement appointing an agent
21 to receive service of process must meet the requirements for execution of an
22 original statement.

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24 SECTION 11. CLAIM NOT ABATED BY CHANGE. A claim against a nonprofit
25 association does not abate merely because of a change in its members or
26 persons authorized to manage the affairs of the nonprofit association.

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28 SECTION 12. VENUE. For purposes of venue, a nonprofit association is a
29 resident of the county in which it has an office.

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31 SECTION 13. SUMMONS AND COMPLAINT; SERVICE ON WHOM. In an action or
32 proceeding against a nonprofit association a summons and complaint must be
33 served on an agent authorized by appointment to receive service of process, an
34 officer, managing or general agent, or a person authorized to participate in
35 the management of its affairs. If none of them can be served, service may be
36 made on a member.

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2 SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This Act shall
3 be applied and construed to effectuate its general purpose to make uniform the
4 law with respect to the subject of this Act among States enacting it.

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6 SECTION 15. SHORT TITLE. This Act may be cited as the Uniform
7 Unincorporated Nonprofit Association Act.

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9 SECTION 16. TRANSITION CONCERNING REAL AND PERSONAL PROPERTY.

10 If, before the effective date of this Act, an estate or interest in real
11 or personal property was by terms of the transfer purportedly transferred to a
12 nonprofit association but under the law the estate or interest did not vest in
13 the nonprofit association, on the effective date of this Act the estate or
14 interest vests in the nonprofit association, unless the parties have treated
15 the transfer as ineffective.

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17 SECTION 17. SAVINGS CLAUSE. This Act does not affect an action or
18 proceeding commenced or right accrued before this Act takes effect.

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20 SECTION 18. All provisions of this act of a general and permanent
21 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
22 Code Revision Commission shall incorporate the same in the Code.

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24 SECTION 19. If any provision of this act or the application thereof to
25 any person or circumstance is held invalid, such invalidity shall not affect
26 other provisions or applications of the act which can be given effect without
27 the invalid provision or application, and to this end the provisions of this
28 act are declared to be severable.

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30 SECTION 20. All laws and parts of laws in conflict with this act are
31 hereby repealed.

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